EXHIBIT A

Privileged and Confidential
Subject to FRE 408

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE SCHERING-PLOUGH CORPORATION ERISA LITIGATION	))))	CIVIL ACTION NO. 03-1204 (KSH)

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("*Settlement Agreement*") is entered into by and among (i) the *Named Plaintiff* in the above-captioned *Action* for herself and on behalf of the *Settlement Class* and the *Plan*, and (ii) the Schering-Plough Corporation, now known as Merck & Co., Inc., the Schering-Plough Employee Benefits Committee, the Schering-Plough Employee Benefits Investment Committee, and the *Individual Defendants* (collectively, "*Defendants*").

WHEREAS, *Named Plaintiff* in the above-captioned *Action* asserts various *Claims* for relief under *ERISA* against *Defendants*, all of which *Claims* are disputed by *Defendants*; and

WHEREAS, the *Parties* desire to promptly and fully resolve and settle with finality the *Action*;

NOW, THEREFORE, the *Parties*, in consideration of the promises, covenants and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

1. DEFINITIONS

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1. "*Action*" shall mean *In re Schering-Plough Corporation ERISA Litigation*, No. 03-1204 (KSH) (D.N.J.), and any and all cases now or hereafter consolidated therewith.

1.2. "*Agreement Execution Date*" shall have the meaning set forth in Section 11.12.

1.3. "*Affiliates*" shall mean any entity (whether a corporation, partnership, or other trade or business) under "common control" with *Schering-Plough*, as defined in *ERISA* § 3(40)(B)(iii).

1.4. "*Claims*" shall mean any and all claims, counterclaims, demands, actions, causes of action, judgments, debts, expenses, losses, liabilities, and obligations, including attorneys' fees, expenses and costs.

S. R.

1.5. "*Case Contribution Award*" shall mean the monetary amount awarded by the *District Court* to be paid from the *Class Settlement Amount* in recognition of *Named Plaintiff's* assistance in the prosecution of this *Action*, for which *Lead Counsel* may seek an amount not exceeding $10,000.00.

1.6. "*Class Notice*" shall mean the form of notice appended as *Exhibit A* to the form of *Preliminary Approval Order*, attached hereto as *Exhibit 1*.

1.7. "*Class Period*" shall mean the period from July 29, 1998 to April 18, 2007.

1.8. "*Class Settlement Amount*" shall mean the sum of eight million five hundred thousand dollars ($8,500,000.00).

1.9. "*Company*" shall mean *Schering-Plough*, each of its *Affiliates*, and each of its predecessors and *Successors-In-Interest*.

1.10. "*Company Stock Fund*" shall mean the Schering-Plough Stock Fund, an investment fund within the *Plan* that invested primarily in shares of *Schering-Plough Stock*.

1.11. "*Complaint*" shall mean the First Amended Consolidated Complaint for Breach of Fiduciary Duty Under ERISA, filed on March 30, 2006 in the *Action*.

1.12. "*Defendants*" shall mean the *Individual Defendants*, *Schering-Plough*, the Schering-Plough Employee Benefits Committee and the Schering-Plough Employee Benefits Investment Committee.

1.13. "*Defendants' Insurer*" shall mean Chartis Insurance, Inc., as *Successor* to National Union Fire Insurance Company of Pittsburgh, PA, which insured *Defendants* under Policy No. 872-04-60, during the policy period from December 31, 2000 to December 31, 2001.

1.14. "*Defendants' Released Claims*" shall mean any and all *Claims* relating to the institution or prosecution of the *Action* or relating to the settlement of any of *Plaintiff's Released Claims*.

1.15. "*Defendants' Released Persons*" shall mean the *Named Plaintiff*, the *Settlement Class*, *Lead Counsel*, *Liaision Counsel* and their appointed representatives.

1.16. "*District Court*" shall mean the United States District Court for the District of New Jersey.

1.17. "*Effective Date*" shall mean the date on which the *Final Judgment* becomes *Final*.

1.18. "*ERISA*" shall mean the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated and case law thereunder.

1.19. "*Fairness Hearing*" shall have the meaning set forth in Section 2.1.5.

EB

1.20. "*Final*" shall mean, with respect to any judicial ruling or order, that: (a) the time has expired to file an appeal, motion for reargument, motion for rehearing, petition for a writ of certiorari or other writ with respect to such judicial ruling or order with no such appeal, motion, petition or writ having been filed; or (b) if an appeal, motion for reargument, motion for rehearing, petition for a writ of certiorari or other writ has been filed with respect to such judicial ruling or order, (i) the judicial ruling or order has been affirmed without modification and with no further right of review, or (ii) such appeal, motion, petition, or writ has been denied or dismissed with no further right of review.

1.21. "*Final Judgment*" shall mean a judgment substantially in the form attached hereto as *Exhibit 2*.

1.22. "*Financial Institution*" shall have the meaning set forth in Section 7.1.1.

1.23. "*Independent Fiduciary*" shall mean a *Plan* fiduciary retained by *Schering-Plough*, in *Schering-Plough's* sole discretion, to evaluate the fairness of the *Settlement* to the *Plan* and issue a release on the *Plan's* behalf. The *Independent Fiduciary* shall have no relationship to or interest in *Named Plaintiff* or *Defendants* that might affect such *Person's* best judgment as a fiduciary.

1.24. "*Individual Defendants*" shall mean Richard J. Kogan, Regina E. Herzlinger, Eugene R. McGrath, Donald L. Miller, Carl E. Mundy, James Wood, Patricia F. Russo, David H. Komansky, Kathryn C. Turner, John Ryan, Vincent Sweeney, E. Kevin Moore, Jack L. Wyszomierski, and Joseph J. LaRosa.

1.25. "*Lead Counsel*" shall mean Barroway Topaz Kessler Meltzer & Check, LLP.

1.26. "*Liaison Counsel*" shall mean Lite DePalma Greenberg, LLC.

1.27. "*Mediator*" shall mean The Honorable Nicholas H. Politan (Ret.).

1.28. "*Named Plaintiff*" or "*Plaintiff*" shall mean Michele Wendel.

1.29. "*Parties*" shall mean *Named Plaintiff* and *Defendants*.

1.30. "*Person*" shall mean an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.31. "*Plaintiff's Released Claims*" shall mean any and all past, present, and future *Claims*, known or unknown, accrued or unaccrued, by or on behalf of the *Plan*, the *Named Plaintiff*, and each and every member of the *Settlement Class*, and their respective heirs, beneficiaries, executors, administrators, past and present partners, agents, attorneys, and assigns against *Plaintiff's Released Persons* that: (a) were brought or could have been brought in either an individual or derivative capacity against *Defendants* in the *Action*; (b) arise out of the *Action* or are in any way related to any of the acts, omissions, facts, matters, transactions or occurrences alleged in the *Complaint*; or (c) were or could have been asserted under *ERISA* based on or relating to investment in *Schering-Plough Stock* or the *Company Stock Fund* by or through the *Plan* during the *Class Period*.

TL

Plaintiff's Released Claims shall also include any and all *Claims* relating to any actions or conduct by *Plaintiff's Released Persons* related to the calculation or allocation of the *Settlement Fund* pursuant to the *Plan of Allocation*, provided such actions or conduct are carried out in good faith and non-negligently. Nothing in this *Settlement* shall release or discharge any *Claim* that has been asserted in the First Amended Class Action Complaint, filed on October 1, 2009, in the separate action of *In re Schering-Plough Corporation ENHANCE ERISA Litigation*, No. 08-cv-1432 (DMC) (D.N.J.) (Docket No. 47).

1.32. "*Plaintiff's Released Persons*" shall mean (a) *Schering-Plough* and its parents, *Affiliates*, partners, subsidiaries, predecessors, *Successors*, assigns, and past or present directors, officers, employees, associates, controlling persons, attorneys, counselors, insurers, reinsurers, financial or investment advisors, consultants, accountants, advisors, representatives or agents, and (b) each of the other *Defendants* and their respective family members, heirs, executors, trustees, personal representatives, estates or administrators, attorneys, counselors, insurers, reinsurers, financial or investment advisors, consultants, accountants, advisors, representatives or agents.

1.33. "*Plan*" shall mean the Schering-Plough Employees' Savings Plan and all predecessor and successor plans, individually and collectively, and any trust created under such Plan. This definition includes the assets of the Schering-Plough Employees' Profit-Sharing Incentive Plan, which was merged into the Schering-Plough Employees' Savings Plan on or about September 10, 2004.

1.34. "*Plan of Allocation*" shall mean the Plan of Allocation approved by the *District Court* as contemplated by Sections 2.1.4 and 2.1.5 and described in Section 8.3.3 and in the form attached hereto as *Exhibit 3*.

1.35. "*Preliminary Approval Order*" shall have the meaning set forth in Section 2.1.1 and be in the form attached hereto as *Exhibit 1*.

1.36. "*Preliminary Approval Motion*" shall have the meaning set forth in Section 2.1.1.

1.37. "*Schering-Plough*" shall mean the Schering-Plough Corporation, now known as Merck & Co., Inc., and each of its *Affiliates*, predecessors and *Successors-In-Interest*.

1.38. "*Schering-Plough Stock*" shall mean shares of *Schering-Plough* common stock.

1.39. "*Settlement*" shall mean the settlement to be consummated under this *Settlement Agreement*.

1.40. "*Settlement Agreement*" shall mean this Settlement Agreement, including any modifications or amendments adopted pursuant to Section 11.3.

1.41. "*Settlement Class*" shall mean all *Persons* (excluding the *Defendants*) who were participants in or beneficiaries (including alternate payees) of the *Plan* at any time between July 29, 1998 to April 18, 2007, and whose accounts included investment in the *Company Stock Fund* at any point during that time period.

EJS

1.42. "*Settlement Fund*" shall have the meaning set forth in Section 7.1 and all subparts thereof.

1.43. "*Successors*" or "*Successors-In-Interest*" shall mean a *Person's* estate, legal representatives, heirs, successors, or assigns, including successors or assigns that result from corporate mergers or other structural changes.

2. CONDITIONS AND OBLIGATIONS RELATING TO THE EFFECTIVENESS OF THE SETTLEMENT

The *Settlement* shall not become effective unless and until each and every one of the conditions and obligations in Sections 2.1 through 2.5 has been either satisfied or waived in writing by the *Party* entitled to the benefit of the condition or obligation:

2.1. Condition #1: *District Court* Approval and Class Certification. The *District Court* must have approved the *Settlement* and certified the *Action* as a class action for settlement purposes in accordance with the following steps:

2.1.1. Motion for Preliminary Approval of *Settlement*. The *Parties* will, in good faith, use their respective reasonable best efforts to enable the *Named Plaintiff* to file a motion ("*Preliminary Approval Motion*") with the *District Court* for an order, substantially in the form annexed hereto as *Exhibit 1*, including the exhibits thereto (the "*Preliminary Approval Order*") as soon as practicable, and the *Parties* shall, in good faith, take reasonable steps to (a) secure expeditious entry of the *Preliminary Approval Order* by the *District Court*; and (b) seek a date for the *Fairness Hearing*, described in Section 2.1.5, sixty (60) days from the mailing of the *Class Notice*, or at such other time set by the *District Court* in accordance with Section 2.1.5.

2.1.2. Class Certification. In connection with the proceedings on preliminary and final approval of the proposed *Settlement*, *Named Plaintiff* shall, through *Lead Counsel*, seek orders (preliminary and final, respectively) certifying the *Settlement Class* pursuant to FED. R. CIV. P. 23(b)(1) and *Defendants* shall consent to such certification of the *Settlement Class* for purposes of this *Settlement* only.

2.1.3. Entry of Preliminary Approval Order. The *District Court* shall enter a *Preliminary Approval Order* substantially in the form annexed hereto as *Exhibit 1*.

2.1.4. Issuance of *Class Notice*. Pursuant to the *Preliminary Approval Order* to be entered by the *District Court*, *Lead Counsel* shall cause the *Class Notice* to be disseminated to the *Settlement Class*. *Schering-Plough* shall use its reasonable best efforts in good faith to provide *Lead Counsel*, in electronic format, within thirty (30) days following the date on which the *District Court* enters the *Preliminary Approval Order*, the names and last known addresses of the *Settlement Class* and timely respond to any reasonable written requests for accessible data in *Schering-Plough* or the *Plan's* custody or control necessary to effectuate notice and implement, enforce or determine the administrability of a *Plan of Allocation* (as described and/or provided for herein). No charge against the *Settlement Fund* or to *Named Plaintiff*, *Lead Counsel*, *Liaison Counsel*, or the *Settlement Class* shall be made, directly or indirectly, for the gathering or the provision of such information or assistance.

2.1.5. The *Fairness Hearing*. In connection with the *Preliminary Approval Motion*, the *Parties* will request that the *District Court* schedule and conduct a hearing sixty (60) days from the mailing of the *Class Notice*, at which it will consider whether the *Settlement* is fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure (the "*Fairness Hearing*"). Specifically, the *Named Plaintiff* will request that the *District Court* determine, on or after the *Fairness Hearing*: (a) whether to enter *Final Judgment*, substantially in the form attached as *Exhibit 2*, granting final approval of the *Settlement* and dismissing with prejudice the *Action*; (b) whether the distribution of the *Class Settlement Amount* as provided in the *Plan of Allocation* should be approved or modified; (c) what legal fees, compensation and expenses should be awarded to *Lead Counsel* and *Liaison Counsel* as contemplated by Section 10 of this *Settlement Agreement*; and (d) what amount of *Case Contribution Award*, if any, should be awarded to the *Named Plaintiff*. The *Parties* agree to support entry of the *Final Judgment*. *Defendants* shall not take any position with respect to the matters described in clauses (b), (c) or (d) of this Section 2.1.5, so long as disposition of those matters is substantially in accordance with the provisions of Section 8 and Section 10 of this *Settlement Agreement*. The *Parties* otherwise covenant and agree that they will reasonably cooperate with one another in seeking entry of the *Final Judgment*.

2.2. Condition #2: Funding of *Class Settlement Amount*. *Defendants* must have caused the *Class Settlement Amount* to be deposited into the *Settlement Fund* in accordance with Section 7.2.

2.3. Condition #3: Finality of *Final Judgment*. The *Final Judgment* must have become *Final*.

2.4. Condition #4: *Independent Fiduciary's* Approval.

2.4.1. Approval by the *Independent Fiduciary*. The *Independent Fiduciary* must have approved the *Settlement* in accordance with this Section 2.4.1. Subject to *Schering-Plough's* right to waive this condition, as described in Section 2.4.2, the *Settlement* shall be contingent upon the *Independent Fiduciary*: (a) approving the *Settlement* in writing; (b) granting a written release of *Plaintiff's Released Claims* to *Plaintiff's Released Persons* on behalf of the *Plan*; and (c) either (i) authorizing the *Settlement* in accordance with Prohibited Transaction Class Exemption 2003-39, or (ii) finding that the *Settlement* does not constitute a prohibited transaction under *ERISA* § 406, in each case in a written instrument in form reasonably acceptable to *Schering-Plough*. The *Parties* shall cooperate in providing information to the

TL

Independent Fiduciary, as requested. *Defendants' Insurer* shall bear all costs and expenses associated with the *Independent Fiduciary*.

2.4.2. Waiver of Approval by the *Independent Fiduciary*. *Schering-Plough* shall determine in its sole discretion whether the *Settlement* shall be contingent on any, some, or all of the conditions identified in clauses (a), (b), and (c) of Section 2.4.1. Any waiver of any of those conditions by *Schering-Plough* shall be effective only if in writing and signed by an authorized officer of *Schering-Plough*.

2.4.3. Notice of Approval by the *Independent Fiduciary* or Waiver. *Schering-Plough* shall notify *Lead Counsel* no later than ten (10) days prior to the *Fairness Hearing* as to whether the *Independent Fiduciary* has provided the requisite approval, authorization, or finding, or whether *Schering-Plough* has elected to waive the conditions identified in clauses (a), (b), and (c) of Section 2.4.1. In the event that *Independent Fiduciary* provides the requisite approval, authorization, or finding, the *Parties* shall cooperate in filing the report of the *Independent Fiduciary* approving the *Settlement* with the *District Court* no later than five (5) days prior to the *Fairness Hearing*.

3. **RELEASES**

3.1. *Named Plaintiff's*, the *Settlement Class's*, and the *Plan's* Releases. Upon the *Effective Date*, the *Named Plaintiff*, the *Settlement Class*, and the *Plan* shall conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge *Plaintiff's Released Persons* from all of *Plaintiff's Released Claims*.

3.2. *Defendants'* Releases. Upon the *Effective Date*, *Defendants* shall conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge *Defendants' Released Persons* from all of *Defendants' Released Claims*.

3.3. Scope of *Releases*.

3.3.1. Nothing in this *Settlement* shall release or discharge any *Claim* that (a) has been or could be asserted directly or derivatively by any member of the *Settlement Class* or the *Plan* under the federal securities laws or the securities laws of any state regarding the purchase or sale of any *Schering-Plough* security or debt instrument, or (b) has been asserted in the First Amended Class Action Complaint, filed on October 1, 2009, in *In re Schering-Plough Corporation ENHANCE ERISA Litigation*, No. 08-cv-1432 (DMC) (D.N.J.) (Docket No. 47).

3.3.2. The release and discharge set forth in Sections 3.1 and 3.2 shall not include the release or discharge of any rights or duties of the *Parties* arising out of this *Settlement Agreement*, including the express warranties and covenants contained herein.

3.3.3. *Named Plaintiff*, on her own behalf and on behalf of the *Settlement Class* and the *Plan*, and *Defendants* hereby expressly waive any and all rights and benefits respectively conferred upon her and them by the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common laws of any other state, territory, or other jurisdiction. Section 1542 reads in pertinent part:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Named Plaintiff, on her own behalf and on behalf of all members of the *Settlement Class* and the *Plan*, and *Defendants* hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other state, territory, or other jurisdiction is a material term of this *Settlement Agreement* that was bargained for and without which the *Parties* would not have entered into this *Settlement Agreement*.

4. **COVENANTS**

4.1. Covenants Not to Sue.

4.1.1. From and after the *Effective Date*, *Named Plaintiff*, on her own behalf and on behalf of the *Settlement Class* and the *Plan*, covenant and agree: (a) not to file any *Claim*, individual or derivative, released under Section 3 against any of *Plaintiff's Released Persons* or the *Plan*; and (b) that the foregoing covenant and agreement shall be a complete defense to any such *Claims* against any of *Plaintiff's Released Persons* or the *Plan*.

4.1.2. From and after the *Effective Date*, *Defendants* covenant and agree (a) not to file any *Claim* released under Section 3 against any of *Defendants' Released Persons* or the *Plan* or any other *Defendant*; and (b) that the foregoing covenants and agreements shall be a complete defense to any such *Claims* against any of *Defendants' Released Persons*, the *Plan*, or any *Defendant*.

4.2. Taxation of *Class Settlement Amount*. *Named Plaintiff* acknowledges on her own behalf, and on behalf of the *Settlement Class*, that none of the *Plaintiff's Released Persons* has any responsibility for any taxes due on funds deposited in the *Settlement Fund*, including those funds that *Lead Counsel* receives from the *Class Settlement Amount*, should any be awarded pursuant to Section 10 of this *Settlement Agreement*. Nothing herein shall constitute an admission or representation that any taxes will or will not be due on the *Class Settlement Amount*. Nevertheless, the *Parties* agree that that the amounts allocated pursuant to the *Plan of Allocation* are being made to restore losses to the *Plan* on account of the investment in *Schering-Plough Stock* and therefore are "restorative payments" within the meaning of Revenue Ruling 2002-45.

SB

5. REPRESENTATIONS AND WARRANTIES

5.1. *Named Plaintiff's* Representations and Warranties.

5.1.1. *Named Plaintiff*, on her own behalf and on behalf of the *Settlement Class*, represents and warrants, as of the date hereof and as of the *Effective Date*, that neither she nor any member of the *Settlement Class* has sold, assigned, transferred, hypothecated, pledged or encumbered, or otherwise disposed of, in whole or in part, voluntarily or involuntarily, any *Claim* against any of *Plaintiff's Released Persons* or the *Plan* released pursuant to this *Agreement*, and further covenant that neither she nor any member of the *Settlement Class* will assign or otherwise transfer any interest in any of *Plaintiff's Released Claims.*

5.1.2. *Named Plaintiff*, on her own behalf and on behalf of the *Settlement Class*, further represents and warrants that, from and after the *Effective Date*, she and the *Settlement Class* shall have no surviving *Claim* against any of the *Plaintiff's Released Persons* or the *Plan* with respect to the *Plaintiff's Released Claims*.

5.2. *Parties'* Representations and Warranties. Each of the *Parties*, on his, her, or its behalf only, represents and warrants, severally and not jointly, to each of the other *Parties*:

5.2.1. That he, she, or it is voluntarily entering into this *Settlement Agreement* as a result of arms-length negotiations among his, her or its counsel, with the assistance of the *Mediator*; that in executing this *Settlement Agreement* he, she, or it is relying solely upon his, her or its own judgment, belief and knowledge, and the advice and recommendations of his, her, or its own independently selected counsel, concerning the nature, extent and duration of his, her, or its rights and *Claims* hereunder and regarding all matters which relate in any way to the subject matter hereof; and that, except as expressly provided herein, he, she, or it has not been influenced to any extent whatsoever in entering into this *Settlement Agreement* by any representations, warranties, or statements pertaining to any of the foregoing matters by any *Party* or by any *Person* representing any *Party*.

5.2.2. That he, she, or it assumes the risk of mistake as to facts or law.

5.2.3. That he, she, or it has carefully read the contents of this *Settlement Agreement*, and that he, she, or it has freely entered into this *Settlement Agreement.*

5.2.4. That he, she, or it has made such investigation of the facts pertaining to the *Settlement*, this *Settlement Agreement* and all of the matters pertaining thereto, as he, she, or it deems necessary.

5.3. Signatories' Representations and Warranties. Each individual executing this *Settlement Agreement* on behalf of any other *Person* or the *Settlement Class* does hereby personally represent and warrant to the other *Parties* that he or she has the authority to

EK

execute this *Settlement Agreement* on behalf of, and fully bind, each principal whom such individual represents or purports to represent.

6. NO ADMISSION OF LIABILITY

6.1. No Decision on the Merits. Each of the *Parties* understands and agrees that: (a) this *Settlement Agreement* embodies a compromise settlement of disputed claims for the purpose of avoiding the costs, disruptions, and uncertainties associated with further litigation; (b) nothing in this *Settlement Agreement*, including the furnishing of consideration for this *Settlement Agreement*, shall be deemed to constitute any finding of fiduciary status under *ERISA* or wrongdoing by any of the *Defendants*, or give rise to any inference of fiduciary status under *ERISA* or wrongdoing or admission of wrongdoing or liability in the *Action* or any other proceeding; and (c) this *Settlement Agreement* and the payments made hereunder do not constitute a ruling on the merits, an admission as to any issue of fact or principle at law, or an admission of any liability or wrongdoing of any kind, and no *Party* shall assert or suggest otherwise. *Defendants* specifically and expressly deny any liability or wrongdoing of any kind.

6.2. Reliance on FRE 408. This *Settlement Agreement* has been executed in reliance upon the provisions of Rule 408 of the Federal Rules of Evidence and all cognate state rules precluding the introduction of evidence regarding settlement negotiations or agreements and neither the fact nor the terms of this *Settlement Agreement* shall be offered or received in evidence, or otherwise introduced in any action or proceeding, for any purpose, except (a) in an action or proceeding seeking to enforce or interpret the terms of this *Settlement Agreement* or arising out of or relating to the *Preliminary Approval Order* or the *Final Judgment*, or (b) in an action or proceeding where the releases or covenants not to sue provided pursuant to Sections 3 and 4 of this *Settlement Agreement* may serve as a bar to recovery.

7. THE SETTLEMENT FUND AND DEPOSITS INTO THE SETTLEMENT FUND

7.1. The Settlement Fund.

7.1.1. No later than five (5) business days after the entry of the *Preliminary Approval Order*, *Lead Counsel* shall: (a) establish at a federally-insured financial institution (the "*Financial Institution*") an account for the purpose of holding funds (the "*Settlement Fund*") to be deposited into the account; and (b) provide notice to *Defendants* of the information needed to deposit the *Class Settlement Amount* into the *Settlement Fund*. The monies in the *Settlement Fund* shall be considered a common fund created as a result of the *Action*.

7.1.2. The *Settlement Fund* shall include and retain interest and income earned thereon, for the benefit of *Named Plaintiff* and the *Settlement Class*, and shall be invested only in United States Treasury securities and/or securities of United States agencies backed by the full faith and credit of the United States Treasury with a maturity period not to exceed thirty (30) days, repurchase agreements collateralized by such securities, and mutual funds or money market accounts, provided that such funds or accounts invest exclusively in the foregoing securities.

7.1.3. *Lead Counsel* or a third-party administrator appointed by *Lead Counsel* shall structure and manage the *Settlement Fund* to qualify as a Qualified Settlement Fund under Section 468B of the Internal Revenue Code and Treasury regulations promulgated thereunder. It is intended that the *Settlement Fund* be structured and administered to ensure, to the maximum degree possible, that the portion of the *Settlement Fund* that is contributed to the *Plan* pursuant to the *Plan of Allocation* will qualify for the favorable tax treatment available for tax-qualified plans and trusts under Sections 401(a) and 501(a) of the Internal Revenue Code. The *Parties* shall not take a position in any filing or before any tax authority inconsistent with such intent.

7.1.4. All taxes on the income of the *Settlement Fund* and tax-related expenses incurred in connection with the taxation of the *Settlement Fund* shall be paid out of the *Settlement Fund*. Fees and expenses incurred for or by any third-party vendor appointed by *Lead Counsel* for calculation, allocation, and distribution pursuant to the *Plan of Allocation* shall also be paid from the *Settlement Fund*.

7.1.5. *Lead Counsel* shall have signature authority over the *Settlement Fund*, and shall direct the *Financial Institution* to pay from the *Settlement Fund* all reasonable costs of administering the *Settlement Fund* without further order of the *District Court*, which expenses shall include: (a) expenses associated with the preparation and filing of all tax reports and tax returns required to be filed by the *Settlement Fund*; (b) payment of any taxes owed by the *Settlement Fund*; (c) expenses associated with the preparation and issuance of any required Forms 1099 associated with payments from the *Settlement Fund*; and (d) fees charged and expenses incurred by the *Financial Institution*, the *Plan* trustee, or the third-party vendor associated with administration of the *Settlement Fund* or the allocation or distribution of the *Settlement Fund* pursuant to the *Plan of Allocation*.

7.1.6. *Lead Counsel* shall instruct the *Financial Institution* to set aside appropriate reserves from the *Settlement Fund* for taxes and for the purpose of satisfying future or contingent expenses or obligations, including expenses of Settlement Fund administration, before any disbursement is made as provided in Section 8 of this *Settlement Agreement*. *Defendants* shall take no position, directly or indirectly, with respect to such matters.

7.1.7. Except as provided in Sections 8 and 10 of the *Settlement Agreement*, no monies shall be paid to *Lead Counsel*, *Liaison Counsel*, *Named Plaintiff*, the *Settlement Class*, or the *Plan* from the *Settlement Fund*, and neither *Lead Counsel* nor *Liaison Counsel* shall seek or obtain any monies from the *Settlement Fund*.

7.1.8. The *Parties* acknowledge and agree that *Defendants* shall have no authority, control, or liability in connection with the design, management,

EB

administration, investment, maintenance, or control of the *Settlement Fund*, for any expenses the *Settlement Fund* may incur, or for any taxes that may be payable by the *Settlement Fund* or any direct or indirect distributee therefrom.

7.2. The *Class Settlement Amount*. In consideration of, and expressly in exchange for, all of the promises and agreements set forth in this *Settlement Agreement*, *Defendants*, through *Defendants' Insurer*, shall cause the *Class Settlement Amount* to be deposited into the *Settlement Fund* within thirty (30) days following entry of the *Preliminary Approval Order*. *Lead Counsel* shall provide to *Defendants' Insurer* any information in writing needed to fund the *Settlement* no later than ten (10) days prior to such funding deadline.

7.3. Sole Monetary Contribution. The *Class Settlement Amount* shall be the full and sole monetary obligation of *Defendants* in connection with the *Settlement* and under this *Settlement Agreement*, and shall be paid into the *Settlement Fund* by *Defendants' Insurer*. No other fees or amounts are payable by *Defendants* pursuant to this *Settlement Agreement* at any time. The *Class Settlement Amount* specifically covers any *Claims* for any costs or expenses associated with or related to the *Class Notice*. Except as otherwise specified in this *Settlement Agreement* or in the insurance policy between *Defendants* and *Defendants' Insurer*, the *Parties* shall bear their own costs and expenses (including attorneys' fees) in connection with the *Settlement*, the negotiation and documentation of this *Settlement Agreement*, and securing all necessary court orders and approvals with respect to the same.

8. PAYMENTS FROM THE SETTLEMENT FUND

8.1. *Parties'* Expenses. Except as otherwise provided for herein, *Defendants* and their counsel shall not charge any fees or expenses to the *Settlement Fund*. All other costs not provided for herein that *Defendants* incur relating to the *Settlement* shall be borne by *Defendants* or *Defendants' Insurer*. All other costs not provided for herein that the *Named Plaintiff* or the *Settlement Class* incurs relating to the *Settlement* shall be borne by *Named Plaintiff*.

8.2. Expenses of *Class Notice*. *Lead Counsel* shall direct the *Financial Institution* in writing to disburse from the *Settlement Fund* the payment of costs of the *Class Notice*.

8.3. Disbursements from the *Settlement Fund*. *Lead Counsel* shall direct the *Financial Institution* to disburse money from the *Settlement Fund* as follows:

8.3.1. For any *Case Contribution Award*, as provided in Section 10.3.

8.3.2. For taxes and expenses of the *Settlement Fund*, as provided in Section 7.1.4.

8.3.3. For the *Plan of Allocation*, *Lead Counsel* shall propose to the *District Court* a *Plan of Allocation* in substantial conformity to the one attached hereto as *Exhibit 3*, which shall provide for the calculation, allocation, and distribution of

SR

the *Settlement Fund* net of the disbursements called for in Section 7 and this Section 8 ("*Net Proceeds*"). Such *Plan of Allocation* shall provide the method by which the specific dollar amount to be allocated by the *Plan* to the *Plan* account of each member of the *Settlement Class* will be calculated. The *Plan of Allocation* proposed by *Lead Counsel* shall be sufficiently specific to allow any third-party vendor appointed by *Lead Counsel*, subject to the consent of *Schering-Plough*, which consent shall not be unreasonably withheld, to perform the calculations called for in the *Plan of Allocation*. As soon as is reasonably practicable after the *Effective Date*, *Lead Counsel* shall direct the *Financial Institution* to disburse the *Net Proceeds* to the *Plan* for allocation to the *Plan* accounts of members of the *Settlement Class* in accordance with the *Plan of Allocation*. *Defendants*, to the extent they were participants or beneficiaries of the *Plan* at any time during the *Class Period*, will be excluded from the *Plan of Allocation*. The *Plan of Allocation* is a matter separate and apart from the *Settlement* between the *Parties*, and no decision by the *District Court* or any other court concerning the *Plan of Allocation* shall affect the validity of the *Settlement Agreement*, the releases or covenants granted herein or the finality of the *Settlement*.

8.3.4. For attorneys' fees and expenses, as described in Section 10.1.

9. **TERMINATION OF THE SETTLEMENT AGREEMENT**

9.1. Termination. This *Settlement Agreement* shall terminate automatically without further action by any Party in the event any of the conditions of Sections 2.1.3 or 2.3 of this *Settlement Agreement* is not fully satisfied. The *Settlement Agreement* shall be terminable by any *Party* by written notice to the other *Parties* if any of the conditions of Sections 2.1.1, 2.1.2, 2.1.4, 2.1.5, 2.2, 2.4.1, 2.4.2, 2.4.3, or 7.2 is not fully satisfied or waived in writing by the Party entitled to the benefit of the condition pursuant to its terms. If the *Settlement Agreement* is terminated, either automatically or by a *Party*, the *Settlement* shall be null and void, except the provisions set forth in Sections 9.2.1, 9.2.2, and 9.2.3 (and any other Section expressly incorporated therein) of the *Settlement Agreement* shall survive any such termination.

9.2. Consequences of Termination of the *Settlement Agreement*. If the *Settlement Agreement* is terminated and rendered null and void for any reason specified in Section 9.1, the following shall occur:

9.2.1. Upon written notice by *Defendants* that the *Settlement Agreement* has been terminated, *Lead Counsel* shall instruct the *Financial Institution* in writing to return to *Defendants* within ten (10) days the amounts contributed to the *Settlement Fund*, with all interest and income earned thereon, except that neither *Lead Counsel* nor any other *Person* shall have an obligation to reimburse to the *Settlement Fund* for the costs of the *Class Notice*, or other costs and expenses of the *Settlement Fund* charged to the *Settlement Fund* under Section 7.1.5 of the *Settlement Agreement*.

SB

9.2.2. The *Action* shall for all purposes with respect to the *Parties* revert to its status as of the day immediately before the *Agreement Execution Date*.

9.2.3. Neither the fact nor the terms of this *Settlement Agreement* shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding arising under, or to give effect to a provision of, this *Settlement Agreement*. The understandings and agreements contained in Sections 6.1 and 6.2 shall survive any termination of this *Settlement Agreement*.

10. **ATTORNEYS' FEES AND EXPENSES**

10.1. Application for Attorneys' Fees and Expenses. *Lead Counsel* (and only *Lead Counsel*) may apply to the *District Court* for an award of attorneys' fees and for reimbursement of expenses to be paid from the *Settlement Fund*, including fees incurred in securing all necessary court orders and approvals with respect to the Settlement Agreement. *Defendants* will not take any position on any fee request submitted by *Lead Counsel*, provided that *Lead Counsel* does not request an award of attorneys' fees in excess of 30% of the *Settlement Fund*, and *Defendants* will not take any position on any request for reimbursement of expenses reasonably incurred in prosecuting the *Action*. In no event shall *Lead Counsel* seek reimbursement of any attorneys' fees or expenses incurred in their application for attorneys' fees and expenses or the application for a *Case Contribution Award*, except as provided in this Section 10.1.

10.2. Disbursement of Attorneys' Fees and Expenses. *Lead Counsel* may direct payment of any court-approved award of fees and expenses from the *Settlement Fund* after the date on which the *District Court* enters *Final Judgment* and (if separate) an order approving *Lead Counsel's* application for fees and expenses. In the event that, before the *Effective Date*, the *Settlement* is set aside or the award of attorneys' fees and expenses is set aside or modified, *Lead Counsel* shall promptly deposit into the *Settlement Fund* the attorneys' fees and expenses paid out which has been set aside or modified, plus interest on fees accrued thereon for the period from payment from the *Settlement Fund* to *Lead Counsel* at a rate equal to the rate of interest earned by the *Settlement Fund* during the same period.

10.3. Application for *Named Plaintiff's* Contribution Award. *Lead Counsel* may apply to the *District Court* for a *Case Contribution Award* payable to the *Named Plaintiff* solely from the *Settlement Fund*. *Defendants* will not take any position on any request for a *Case Contribution Award*.

10.4. Disbursement of *Named Plaintiff's* Contribution Award. After the *Effective Date*, *Lead Counsel* may instruct the *Financial Institution* in writing to disburse payment to the *Named Plaintiff* in the amount awarded by the *District Court* (or as modified, as necessary, following any appeal) as the *Case Contribution Award* from the *Settlement Fund*.

10.5. Post-Award Expenses. *Lead Counsel* may make a supplemental application to the *District Court* for an award of reasonable expenses with respect to post-*Settlement*

26

proceedings and administration, and any such award shall be payable only from the *Settlement Fund* and not by any *Defendant*.

11. **MISCELLANEOUS PROVISIONS**

11.1. Governing Law. This *Settlement Agreement* shall be governed by the laws of the State of New Jersey without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.

11.2. Severability. In the event that any court with original or appellate jurisdiction over this *Action* issues a *Final* determination that any portion of Section 3 of this *Settlement Agreement* is not enforceable, the *Parties* may (but shall not be required to) jointly agree in writing to modify Section 3 to conform with such determination. With the sole exception set forth in the preceding sentence, the provisions of this *Settlement Agreement* are not severable.

11.3. Amendment. Before entry of the *Final Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties* with notice to be given to the *District Court* of the agreed modification or amendment. Following entry of the *Final Judgment*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties*, and approved by the *District Court*.

11.4. Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving *Party*. The waiver by any *Party* of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

11.5. Construction. None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

11.6. Principles of Interpretation. The following principles of interpretation apply to this *Settlement Agreement*.

11.6.1. Headings. The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

11.6.2. Singular and Plural. Definitions apply to the singular and plural forms of each defined term.

11.6.3. Gender. Definitions apply to the masculine, feminine, and neuter genders of each defined term.

SK

11.6.4. References to a *Person*. References to a *Person* are also to the *Person's Successors-in-Interest*.

11.6.5. Terms of Inclusion. Whenever the words "include," "includes," or "including" are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words "but not limited to."

11.7. Further Assurances. Each of the *Parties* agrees, without further consideration and as part of effectuating the *Settlement*, that they will in good faith execute and deliver such other documents and take such other actions as may be reasonably necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

11.8. Notices. Any notice, demand or other communication under this *Settlement Agreement* (other than the *Class Notice*, or other notices given at the direction of the *District Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid) or delivered by reputable express overnight courier.

IF TO *NAMED PLAINTIFF* OR THE *SETTLEMENT CLASS*:

Joseph H. Meltzer
BARROWAY TOPAZ KESSLER
MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

IF TO *DEFENDANTS*:

Eric C. Bosset
COVINGTON & BURLING LLP
Washington, DC 20004
Telephone: (202) 662-5606
Facsimile: (202) 662-6291

11.9. Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Parties* relating to this *Settlement*.

11.10. Counterparts. This *Settlement Agreement*, and any amendments thereto, and waivers of conditions, may be executed by exchange of executed signature pages by facsimile or Portable Document Format ("PDF") as an electronic mail attachment, and any signature transmitted by facsimile or PDF via electronic mail for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute one and the same instrument.

11.11. Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors and successors.

11.12. Agreement Execution Date. The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

11.13. No Benefits to Non-Parties. Except as otherwise expressly stated herein, this *Settlement Agreement* is not intended to confer any benefits upon any *Person*.

11.14. Deadlines Falling on Weekends or Holidays. To the extent that any deadline set forth in this *Settlement Agreement* falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

IN WITNESS WHEREOF, the *Parties* have executed this *Settlement Agreement* on the dates set forth below.

FOR *NAMED PLAINTIFF* AND ON BEHALF OF THE *SETTLEMENT CLASS*:

Dated: 7/13/10 By: ______________________

Joseph H. Meltzer
Edward W. Ciolko
Peter H. LeVan, Jr.
BARROWAY TOPAZ KESSLER
MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

Lead Counsel for Named Plaintiff and the Settlement Class

FOR *DEFENDANTS*:

Dated: 7/15/10 By: ______________________

Eric Bosset
Frederick G. Sandstrom
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue NW
Washington, D.C. 20004
Telephone: (202) 662-5606
Facsimile: (202) 662-6291

Counsel for Defendants